

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Murray	Team: Team # 2	CCRB Case #: 201207355	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/03/2012 1:15 AM	Location of Incident: Richard Street and Visitation Place, PSA 1 stationhouse	Precinct: 76	18 Mo. SOL 12/3/2013	EO SOL 12/3/2013	
Date/Time CV Reported Mon, 06/04/2012 12:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/07/2012 3:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Shawn Nigro	20998	945268	PSA 1
2. SGT Miguel Figueroa	03780	939822	PSA 1
3. An officer			
4. POM Jason Zeikel	05634	945129	PSA 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Lauren Shepherd	06524	939459	PSA 1
2. POM Scot Kashinsky	21885	947120	PSA 1

Officer(s)	Allegation	Investigator Recommendation
A.SGT Miguel Figueroa	Force: Sgt. Miguel Figueroa used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.	
B.POM Shawn Nigro	Force: PO Shawn Nigro used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.	
C.POM Shawn Nigro	Discourtesy: PO Shawn Nigro spoke rudely to § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.	
D.POM Jason Zeikel	Force: PO Jason Zeikel used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.	
E. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force at the PSA 1 stationhouse.	

Case Summary

On June 4, 2012, § 87(2)(b) filed this complaint with IAB via phone, generating IAB log 12-30287 (Enc. 3a – 3b). This complaint was received at the CCRB on June 7, 2012 (Enc. 4a – 4b). On June 3, 2012, at 1:15 a.m., officers stopped § 87(2)(b) for being in Coffey Park after dark. The following allegations resulted:

- **Allegation A – Force: Sgt. Miguel Figueroa used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.**
- **Allegation B – Force: PO Shawn Nigro used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C – Discourtesy: PO Shawn Nigro spoke rudely to § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.**
- **Allegation D – Force: PO Jason Zeikel used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation E – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force at the PSA 1 stationhouse.**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. He is a 6'1" tall, 175-pound Hispanic man with brown eyes and hair.

Arrest Photograph

§ 87(2)(b)'s arrest photo does not depict visible physical facial injuries (Enc. 7a).

CCRB Statement

§ 87(2)(b) provided a phone statement to the CCRB on July 2, 2012 (Enc. 5a), and was interviewed at the CCRB on August 13, 2012 (Enc. 6a – 6e).

On June 2, 2012, § 87(2)(b) attended a family gathering at § 87(2)(b), in Brooklyn, from 7:30 p.m. until 1 a.m., on June 3, 2012, in which he did not consume drugs or alcohol. At approximately 1:15 a.m., § 87(2)(b) his mother, § 87(2)(b) his girlfriend, § 87(2)(b) and young son left the gathering. They entered Coffey Park near the intersection of Richard Street and King Street, in order to cut through the park. § 87(2)(b) heard muffled words coming from the loudspeaker of an unmarked black Impala, which was 50 to 75 feet away, but was unable to hear what the person was saying or whether the person was addressing § 87(2)(b) and his family. The vehicle then sped out of the parking lot and drove around the park in circles until the family exited the park.

Upon exiting the park, the vehicle pulled in front of § 87(2)(b) blocking his path. PO Shawn Nigro of PSA 1, identified via investigation and described by § 87(2)(b) as a 6'2" tall, uniformed white male in his late 20s to early 30s with spiky hair, exited the drivers' seat and instructed § 87(2)(b) to put his hands behind his back. § 87(2)(b) refused to do so and argued that he had done nothing wrong. PO Nigro asked § 87(2)(b) five or six times to put his hands behind his back, but did not ask for his identification a single time. PO Lauren Shepherd of PSA 1, identified via investigation and described as a 6'0" tall, white or Hispanic female in her 20s, exited the front seat of the vehicle. Sgt. Miguel Figueroa of PSA 1, identified via investigation and described as a 5'5" tall, Hispanic male in his mid-30s with a gold shield, exited the backseat and approached § 87(2)(b).

Sgt. Figueroa grabbed § 87(2)(b)'s hands and began to force them behind his back. For a reason unknown to § 87(2)(b), Sgt. Figueroa only handcuffed § 87(2)(b)'s left wrist. PO Nigro stood in front of § 87(2)(b) so that he was sandwiched between Sgt. Miguel and PO Nigro. Sgt. Figueroa pushed § 87(2)(b) into PO Nigro, causing PO Nigro to fall backward into the patrol car, with § 87(2)(b) on top of PO Nigro. § 87(2)(b) was unable to gain his balance and was thus pressing against PO Nigro's chest. Sgt. Figueroa continued to push § 87(2)(b) against PO Nigro, causing § 87(2)(b) to involuntarily make contact with PO Nigro. Sgt. Figueroa handcuffed § 87(2)(b)'s right hand, and pushed him to the ground face first. Meanwhile, § 87(2)(b) and § 87(2)(b) grabbed § 87(2)(b)'s son so he would not be trampled. § 87(2)(b) was acting hysterical, causing § 87(2)(b) to yell and plead with the officers that he be allowed to help his mother calm down. PO Nigro ignored § 87(2)(b)'s request, and instead placed his right knee on the back of § 87(2)(b)'s head as he was on the ground and punched him with his left hand a single time in the back-left side of § 87(2)(b)'s head. PO Nigro stated, "Shut the fuck up" to § 87(2)(b).

At no point did § 87(2)(b) attempt to hit an officer with the handcuffs while he was only partially cuffed. § 87(2)(b) did not attempt to strike or kick an officer in any way. § 87(2)(b) did not attempt to choke an officer or charge at an officer. § 87(2)(b) denied threatening to fight an officer. Approximately 40 people gathered around the incident. § 87(2)(b), § 87(2)(b)'s uncle, was also present in the crowd. Some members of the crowd shouted at the officers and appeared to be closing in on the officers, but § 87(2)(b) did not observe any member of the crowd make contact with an officer or throw any items at the officers.

The officers placed § 87(2)(b) into a marked van for about a minute. They then moved him to the back of a marked NYPD sedan with the help of PO Jason Zeikel, who identified via investigation and described by § 87(2)(b) as a 6'2" tall, uniformed white male of an average build with longer spiky hair. While placing him into the RMP, PO Zeikel punched § 87(2)(b) on the right side of his face. § 87(2)(b) was transported to PSA 1.

The officers at the precinct were informed that § 87(2)(b) had injured an officer, and various officers who § 87(2)(b) could not describe visited § 87(2)(b) in the holding cell and made threats against him and his family. Of these officers, a 5'5" tall, plainclothes muscular white male in his 20s or 30s stated to § 87(2)(b) that [he was going to] "Fuck you up" and made a reference to, "kill, hurt or harass" members of § 87(2)(b)'s family. § 87(2)(b) did not sustain physical injuries as a result of this incident and did not receive medical treatment thereafter.

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of this incident. She is a 5'3" tall, 135-pound Hispanic woman with brown hair and brown eyes. § 87(2)(b) who is § 87(2)(b)'s mother, was identified by § 87(2)(b).

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on February 15, 2013 (Enc. 8a – 8e). § 87(2)(g)

When the group exited the park near the intersection of Richards Street and Visitation Place, the black Impala pulled up and stopped suddenly in front of them, preventing them from further crossing street. PO Nigro stated to § 87(2)(b) “Put your fucking hands behind your back” or “Fucking you, I told you to put your hands behind your back.” During his CCRB statement, § 87(2)(b) did not make this allegation on his own behalf. § 87(2)(b) was holding his son and did not comply with PO Nigro’s orders and instead asked, “Why?” PO Nigro asked § 87(2)(b) at least two times to put his hands behind his back, but never requested § 87(2)(b)’s identification. Sgt. Figueroa exited the passenger seat of the vehicle and PO Shepherd exited the backseat of the vehicle.

PO Nigro immediately handcuffed one of § 87(2)(b)’s wrists, but § 87(2)(b) was still holding onto his son, so PO Nigro pushed § 87(2)(b) against the vehicle, causing § 87(2)(b)’s son to fall from his arms. § 87(2)(b) was yelling but was not physically resisting. § 87(2)(b) was pressed against the officers’ vehicle chest-first and was not sandwiched by any two officers. Once § 87(2)(b) released his son, PO Nigro immediately handcuffed § 87(2)(b)’s other arm. During § 87(2)(b)’s CCRB Statement, he alleged that he was sandwiched between officers which ultimately caused him to fall on top of PO Nigro, at which point he still had one hand free from handcuffs.

PO Shepherd brought § 87(2)(b) to the rear of the vehicle to calm her down, as § 87(2)(b) was screaming loudly at the officers. PO Shepherd and § 87(2)(b) engaged in an argument about the officers’ treatment of § 87(2)(b) at which point § 87(2)(b) back was to § 87(2)(b). § 87(2)(b) turned to see Sgt. Figueroa run toward § 87(2)(b) although he was not resisting or moving around at this point. Sgt. Figueroa rammed into § 87(2)(b) causing § 87(2)(b) to fall face first onto the ground. § 87(2)(b) did not alleged that he was charged or tackled by Sgt. Figueroa, noting that he merely pushed to the ground after being handcuffed.

Sgt. Figueroa pressed his knee into § 87(2)(b)’s back and punched § 87(2)(b) at least five times on the back of his head, his neck and his back. During his CCRB Statement, § 87(2)(b) alleged that he was punched a single time by PO Nigro, and he was not punched by Sgt. Figueroa. § 87(2)(b) contended that PO Nigro and PO Shepherd did not use any type of physical force against § 87(2)(b). § 87(2)(b) did not hear § 87(2)(b) threaten to fight an officer nor did she observe him attempt to hit an officer, choke an officer, or charge an officer, noting that § 87(2)(b) was “extremely” compliant for the duration of the incident.

§ 87(2)(b) was being placed into a marked RMP when an officer, whom she could not provide any physical description for, ran up to § 87(2)(b) and punched him in the mouth. § 87(2)(b) became weak during the encounter and was treated by EMS at the scene.

Witness: § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old Hispanic woman. She is § 87(2)(b)’s girlfriend.

Phone Statement

On July 3, 2012, § 87(2)(b) provided a brief phone statement to the CCRB (Enc.9a). § 87(2)(g)

Two male officers pushed § 87(2)(b) and pulled on his arms to get him to the ground. While on the ground and officers handcuffed § 87(2)(b) but did not use additional physical force against him. Once § 87(2)(b) was being placed into the RMP, a tall white male with black hair punched § 87(2)(b).

On June 28, 2012, and July 24, 2012, two please call letters were mailed to § 87(2)(b)’s confirmed address and have not been returned to the CCRB by the United States Postal Service (USPS). On July 3, 2012, contact was established with § 87(2)(b) at which time she provided the above phone statement but refused to make an appointment for an in-person interview. On September 26, 2012, contact was established with § 87(2)(b) a second time and she promised to call the undersigned in regards to providing a statement.

In the interim, three voicemails were left for § 87(2)(b). As of the writing of this report, she has failed to contact the CCRB.

Attempts to Contact Civilians

§ 87(2)(b)
Between June 28, 2012, and September 26, 2012, various attempts were made to contact the complainant in this case, § 87(2)(b). On June 28, 2012, and July 24, 2012, two please call letters were mailed to § 87(2)(b) residence and have not been returned to the CCRB by the USPS. On July 30, 2012, contact was established with § 87(2)(b) and he scheduled an appointment at the CCRB for August 13, 2012. On this day, § 87(2)(b) failed to appear at the CCRB and a missed appointment letter was mailed to him. On August 24, 2012, and September 26, 2012, two follow up phone calls were placed to § 87(2)(b) resulting in voicemails. As of the writing of this report, § 87(2)(b) has failed to contact the CCRB.

NYPD Statements:

Subject Officer: PO SHAWN NIGRO

- *PO Nigro was § 87(2)(b) old at the time of this incident. He is a 6'0" tall, 200 pound white man with brown hair, brown eyes, and a goatee.*
- *PO Nigro worked from 7:30 p.m. on June 2, 2012, to 4:05 a.m. on June 3, 2012, as a PSA 1 Conditions officer. He was working with PO Lauren Shepherd and Sgt. Miguel Figueroa. All officers were assigned to an unmarked black Impala, vehicle #9602, and were working in uniform.*

Memo Book

At 1:05 a.m., one Hispanic male and two Hispanic females were stopped at the corner of Richard Street and Visitation Place. M1H did refuse to produce ID and became irate while attempting to place male under arrest he did violently resist and stated to officers, "I think I am going to fight you now." One unidentified Hispanic female did further obstruct officers' attempts to place male in handcuffs by pulling officers' arms, pushing and slapping officers, and screaming and yelling loudly. Female was not apprehended due to large crowd which formed at the scene. At 1:15 a.m., one individual was placed under arrest by PO Shepherd in regards. At 2 a.m., PO Nigro was transported to § 87(2)(b) due to back pain (Enc. 27a – 27b).

Line of Duty Injury Report, Hospital Discharge Papers, Witness Statements and AIDED Report

PO Nigro prepared a Line of Duty Injury Report as a result of this incident. His report documented right arm and left leg abrasions in addition to back pain, all of which he sustained while attempting to detain § 87(2)(b). PO Nigro also provided his § 87(2)(b) discharge papers, which note that he was diagnosed with "other specified sites of sprains and strains." PO Nigro prepared an AIDED Report and a witness statement for PO Shepherd's line of duty designation in which he confirmed that she received abrasions to her arms while attempting to affect the arrest of § 87(2)(b). PO Nigro also prepared a witness statement for Sgt. Figueroa's line of duty designation in which he noted that Sgt. Figueroa received abrasions to his arms and left knee while affecting § 87(2)(b)'s arrest (Enc. 23a – 23f).

CCRB Statement

PO Nigro was interviewed at the CCRB on March 13, 2013 (Enc. 25a – 25c).

On June 3, 2012, at approximately 1:15 a.m., PO Nigro observed § 87(2)(b) and § 87(2)(b) walking into Coffey Park, in Brooklyn, after the park was closed. From approximately 20 to 30 feet

away, PO § 87(2)(b) went over the loud speaker and stated, “The park is closed. If you enter the park you will receive a summons.” § 87(2)(b) turned around, looked at PO Nigro and yelled, “Shut the fuck up.” The group proceeded to enter the park.

PO Nigro drove to the opposite side of the park and pulled up next to § 87(2)(b). When PO Nigro opened his door to exit, § 87(2)(b) slammed the door of the patrol car. PO Nigro exited the patrol car and gave § 87(2)(b) a verbal command to stop. PO Nigro attempted to frisk § 87(2)(b) for weapons, but § 87(2)(b) pulled his body away and began yelling. § 87(2)(b) refused PO Nigro’s numerous requests for his identification. When PO Nigro began to handcuff § 87(2)(b) he was initially compliant, and once PO Nigro handcuffed one of § 87(2)(b)’s wrists, § 87(2)(b) turned around and stated, “I think I will fight you now.” § 87(2)(b) went to swing at PO Nigro with his free hand, but PO Nigro lowered his body to evade the blow and brought his body against § 87(2)(b) to take him to the ground. Instead, PO Nigro fell backward against the patrol car, almost into the driver’s seat, with § 87(2)(b) on top of him.

§ 87(2)(b)’s arm or forearm was pressed against PO Nigro’s neck, restricting his breathing. PO Nigro is unaware of whether § 87(2)(b) did this intentionally, or not, but PO Nigro was being choked. PO Shepherd and Sgt. Figueroa were out of the vehicle at this point but PO Nigro did not recall § 87(2)(b) being sandwiched or pushed onto him by any other officer.

§ 87(2)(b) was attempting to charge the officers to get to § 87(2)(b) but PO Shepherd prevented her from doing so. Sgt. Figueroa grabbed the back of § 87(2)(b)’s legs and picked them off of the ground. PO Nigro also picked up § 87(2)(b)’s upper body for a brief second to get him off of him, and though PO Nigro could not explain the logistics of this tactic, he stated that § 87(2)(b) immediately went to the ground. PO Nigro was unable to recall how § 87(2)(b) hit the ground or what part of his body made contact with the ground. While he was face down on the ground, § 87(2)(b) was handcuffed.

PO Nigro did not recall placing his knee in the back of § 87(2)(b)’s neck or head. § 87(2)(b) was lying on top of his arms so the officers could not pull them backward. PO Nigro did not punch or strike § 87(2)(b) in the face nor did he see any other officer do so. § 87(2)(b) did not have visible injuries or complain of injuries.

No officer stated, “Shut the fuck up” to § 87(2)(b) and PO Nigro does not believe any officer used profanity. § 87(2)(b) was screaming and attempting to place her body between § 87(2)(b) and the officers throughout the course of this incident. A large crowd of approximately 20 to 30 people gathered at the location. § 87(2)(b) and § 87(2)(b) were lost in the crowd and their IDs were not obtained nor were they summonsed.

Due to the crowd, the officers put § 87(2)(b) in the back of the Impala until a marked sedan arrived for him to be transported. After being handcuffed, no additional physical struggle took place. PO Nigro did not observe an officer punch § 87(2)(b) at any point.

PO Nigro did not recall interacting with § 87(2)(b) in the holding cells at the PSA 1 stationhouse. PO Nigro did not hear an officer threaten to “hurt, kill, or harass” members of § 87(2)(b)’s family and did not see a short, muscular plainclothes white male officer interact with § 87(2)(b) in the holding pen. PO Nigro did not hear an officer state that he “will fuck up” § 87(2)(b).

Subject Officer: SGT. MIGUEL FIGUEROA

- *Sgt. Figueroa was § 87(2)(b) old at the time of this incident. He is a 5’6” tall, 198-pound Hispanic man with black hair and brown eyes.*
- *Sgt. Figueroa worked from 7:15 p.m. on June 2, 2012, to 4 a.m. on June 3, 2012, as the Conditions supervisor in the vicinity of the 76th and 78th Precincts. He was working with PO Sean Nigro and PO Lauren Shepherd. All officers were in uniform and assigned to an unmarked vehicle, #9602.*

Memo Book

At 1:05 a.m., one Hispanic male and two Hispanic females were stopped at the corner of Richards Street and Visitation Place for being in the park after dark. The Hispanic male did refuse to produce ID and became irate and began to fight with us. The male Hispanic stated that he was not going down without a fight. The Hispanic male did push PO Nigro against the car. The other females were un-apprehended and prevented us from making an arrest. At 1:15 a.m., the Hispanic male was placed under arrest by PO Shepherd and the officers returned to PSA 1 stationhouse. At 2 a.m., Sgt. Figueroa was at the stationhouse completing administration work in regards to the arrest. PO Figueroa and PO Shepherd were seen by EMS and PO Nigro was transported by EMS to § 87(2)(b) (Enc. 17a – 17c).

Line of Duty Injury Report and AIDED Report

Sgt. Figueroa went prepared Line of Duty Injury paperwork for this incident but did not actually go line of duty. Sgt. Figueroa documented the presence of arm and left knee abrasions which he sustained while trying to detain § 87(2)(b) (Enc. 18a – 18c).

CCRB Statement

Sgt. Figueroa was interviewed at the CCRB on March 19, 2013 (Enc. 20a – 20c). § 87(2)(g)

At the time of the incident, § 87(2)(b) disobeyed PO Nigro's command to stay out of the park by turning to the officers and yelling "fuck you." PO Nigro pulled the patrol car up to § 87(2)(b)'s side, though Sgt. Figueroa was unable to recall § 87(2)(b) slamming the driver's door of the patrol car. As PO Nigro was speaking to § 87(2)(b) outside of the patrol car, Sgt. Figueroa heard § 87(2)(b) state, "I am going to have to fight you now" and turned to see § 87(2)(b) advance toward PO Nigro. Sgt. Figueroa's vantage point of the incident was obstructed and he did not see the initial stages of the physical altercation.

PO Nigro yelled, "Stop resisting," and once Sgt. Figueroa had exited the vehicle and came to the driver's side to assist PO Nigro, he observed § 87(2)(b) pressed against PO Nigro, who was splayed across the patrol car, and using his hands to choke PO Nigro. § 87(2)(b) had a single cuff on his wrist, and the other was open and dangling, causing Sgt. Figueroa to fear that § 87(2)(b) intended to use it as a weapon. Sgt. Figueroa was positioned behind § 87(2)(b) and attempted to grab § 87(2)(b)'s legs to get him off of PO Nigro, but instead slipped and fell, causing cuts and scraping to his own knees.

Sgt. Figueroa pulled § 87(2)(b)'s legs out from under him and pushed him off of PO Nigro. § 87(2)(b) continued to resist arrest while on the ground by twisting his body away from the officers and refusing to surrender his hands. Sgt. Figueroa and PO Nigro handcuffed § 87(2)(b) and no officer punched § 87(2)(b) in the face. § 87(2)(b) did not sustain visible physical injuries as a result of this incident. Upon speaking to § 87(2)(b) Sgt. Figueroa noted that § 87(2)(b) appeared intoxicated and was slurring his speech.

Sgt. Figueroa did not hear PO Nigro state, "Shut the fuck up" to § 87(2)(b) and he did not make this statement himself. § 87(2)(b) was attempting to interfere with § 87(2)(b)'s arrest, but was prevented from doing so by PO Shepherd, who sustained abrasions to her arms in the process. Approximately 20 people gathered around the incident and were yelling at the officers, causing Sgt. Figueroa to transmit a request for another unit over the radio.

The officers did not want to transport § 87(2)(b) in the unmarked vehicle, as it did not have a cage and § 87(2)(b) was acting violent. Sgt. Figueroa did not observe any officer punch § 87(2)(b) in the face once he was already handcuffed. § 87(2)(b) was transported to the stationhouse, though Sgt. Figueroa only interacted with him in front of the desk. While at the stationhouse, Sgt. Figueroa did not hear an officer state, "I will fuck you up" or threaten to kill, harass or hurt any member of § 87(2)(b)'s family.

Witness Officer: PO LAUREN SHEPHERD

- PO Shepherd was § 87(2)(b) old at the time of this incident. She is a 5'9" tall, 180-pound white woman with brown hair and blue eyes.

- *PO Shepherd worked the same tour and assignment as PO Nigro.*

Memo Book

At 1:05 a.m., one Hispanic male and two Hispanic females were stopped at the corner of Visitation Place and Richards Street for a park after dark violation. The male refused to provide his ID and became irate. While attempting to place male under arrest he did violently resist and stated to officers, “I think I am going to fight you now.” One unidentified Hispanic female did further obstruct officers’ attempts to place the male in handcuffs by pulling officers’ arms, pushing and slapping officers, and screaming very loudly. Female was not apprehended due to large crowd at the scene. At 1:15 a.m., one was placed under arrest. At 1:40 a.m., officers arrived at PSA 1 (Enc. 10a – 10c).

OLBS Arrest Report and Complaint Report

PO Shepherd prepared a complaint report and an OLBS arrest report for § 87(2)(b) who was initially charged with resisting arrest, § 87(2)(b) (Enc. 11a – 11e). PO Shepherd noted, “Defendant was observed inside of a NYC Department Park after dark. While attempting to stop defendant, defendant did become irate and refuse to produce identification. While attempting to effect lawful arrest, defendant did state to Officers Shepherd and Nigro, ‘I think I’m going to fight you now.’ Defendant did proceed to swing at officer Nigro with loose handcuff, shove officer Nigro against RMP, and attempt to choke officer Nigro by wrapping his arms around the officer’s neck. Defendant did continue to resist arrest by flailing his arms and refusing to be handcuffed.” The arrest report noted that physical force was used to overcome an assault, and an officer was injured in the process.

Supporting Depositions

Two supporting depositions regarding this incident were prepared by PO Shepherd on June 3, 2012, and June 14, 2012 (Enc. 12a – 12b). At this time, § 87(2)(b) only faced charges of attempted assault in the third degree, resisting arrest, § 87(2)(a) 160.50. In sum and substance, PO Shepherd testified that § 87(2)(b) refused to leave the park, refused to provide identification, and swung his fists, hands and fingernails at PO Nigro and Sgt. Figueroa. While being arrested, § 87(2)(b) stiffened his arms, threatened to fight PO Nigro, pushed PO Nigro and choked PO Nigro. All three officers involved sustained injuries.

Line of Duty Injury Report, Witness Statements and AIDED Reports

PO Shepherd prepared line of duty injury paperwork for herself but did not actually go line of duty. She documented minor scratches on both left and right forearms. PO Shepherd also prepared an AIDED report and witness statement for PO Nigro’s line of duty designation. She noted that PO Nigro received abrasions to his right arm and left leg in addition to a back strain as a result of § 87(2)(b)’s violent resistance (Enc. 13a – 13d).

Medical Treatment of Prisoner Form

PO Shepherd submitted a notification to the CCRB stating, “No medical treatment form prepared. Defendant refused medical attention and defendant had no injuries.” Sgt. Rosario Garafano of Brooklyn Court Section prepared a Medical Treatment of Prisoner Form for § 87(2)(b) noting the presence of two facial bruises (Enc. 14a – 14b).

CCRB Statement

PO Shepherd was interviewed at the CCRB on April 9, 2013 (Enc. 15a – 15c). § 87(2)(g)

At the time of the incident, § 87(2)(b) refused to abide by PO Nigro's warning to not enter the park, and instead turned to the officers and yelled, "Shut the fuck up." When PO Nigro opened the door of his patrol car, § 87(2)(b) slammed the door back on PO Nigro. PO Nigro requested § 87(2)(b)'s identification numerous times and § 87(2)(b) refused to provide it. When an argument ensued between PO Nigro and § 87(2)(b), § 87(2)(b) began yelling and acting irate. § 87(2)(b) slapped and scratched PO Shepherd a couple of times on her arms and neck when PO Shepherd attempted to prevent § 87(2)(b) from interfering.

As PO Nigro was handcuffing § 87(2)(b), § 87(2)(b) stated, "I think I am going to fight you now." § 87(2)(b) pulled his body away from PO Nigro and swung his fist, which had a loose handcuff dangling from it, at PO Nigro's face. PO Nigro fell backward against the patrol car with § 87(2)(b) leaning on top of him and choking PO Nigro with his hands. Sgt. Figueroa and PO Shepherd were behind § 87(2)(b) attempting to pull him off of PO Nigro. § 87(2)(b) was eventually taken face-first to the ground.

Approximately 30 people gathered around the incident, so PO Shepherd diverted her attention from § 87(2)(b) to the crowd. She did not see an officer punch § 87(2)(b) nor did she hear an officer state, "Shut the fuck up" to § 87(2)(b). PO Shepherd did not observe visible injuries on § 87(2)(b) at any point during the encounter.

PO Jason Zeikel and PO Scot Kashinsky, both of PSA 1, arrived at the location in a marked RMP to transport § 87(2)(b). PO Shepherd did not see either officer punch § 87(2)(b) in the face. § 87(2)(b) was placed into the prisoner holding pen at the PSA 1 stationhouse. PO Shepherd recalled that there was not an officer assigned to be a cell attendant on that day, but protocol calls for a male officer to guard the male prisoners. PO Shepherd was in and out of the holding pen throughout the day to process § 87(2)(b)'s arrest and did not hear any officer threaten § 87(2)(b)'s family or state, "I will fuck you up."

Subject Officer: PO JASON ZEIKEL

- PO Zeikel was § 87(2)(b) old at the time of this incident. He is a 6'4" tall, 205-pound white man with brown hair and brown eyes. PO Zeikel has medium-length slicked back and spiky hair.
- PO Zeikel was the rank of police officer at the time of this incident and has since been promoted to the rank of sergeant.
- PO Zeikel worked from 6 p.m. on June 2, 2013, to 2 a.m. on June 3, 2013. He was working with PO Scot Kashinsky and assigned to the 73rd Precinct Conditions Team. Both officers were in uniform and assigned to marked RMP 9033.

Memo Book

At 1 a.m., one additional unit was requested at Visitation Place. At 1:15 a.m., an arrest was made by PO Shepherd. At 1:20 a.m., one male was transported to PSA 1. At 1:40 a.m., officers arrived at the PSA 1 stationhouse (Enc. 27a – 27b).

CCRB Statement

PO Zeikel was interviewed at the CCRB on April 24, 2013 (Enc. 28a – 28c). § 87(2)(g)

At the time of the incident, PO Kashinsky and PO Zeikel arrived at the incident location to observe approximately ten officers, an unruly crowd of 15 to 20 people, and § 87(2)(b) who was already in handcuffs. PO Zeikel did not observe a physical struggle of any kind. § 87(2)(b) was placed into PO Zeikel's RMP pursuant to Sgt. Figueroa's command, though PO Zeikel was unable to recall which officer placed § 87(2)(b) into the RMP and whether he did so himself. PO Zeikel was unable to recall PO Kashinsky's involvement in this interaction, noting that it may have been PO Kashinsky or himself who placed § 87(2)(b) into the RMP. PO Zeikel does not recall experiencing any issues with § 87(2)(b) including resistance, and PO Zeikel did not punch § 87(2)(b) in the face for any reason, nor did he see any other officer do so.

While at the PSA 1 stationhouse, PO Zeikel does not recall him or PO Kashinsky being present in the prisoner holding cell area. PO Zeikel did not state or hear any other officer state, “whenever you have to go the bathroom, let me know personally and I will take you there.” PO Zeikel did not hear an officer threaten to “fuck him up” or “kill, harass, or hurt” members of § 87(2)(b) s family, nor did he do himself.

NYPD Documents

SPRINT Report N01121

Sprint Report N01121 was generated as a result of this incident (Enc. 31a – 31b). At 1:14 a.m., PO Nigro, Sgt. Figueroa and PO Shepherd, who were assigned to PSA 1 patrol car 9602 made a crime arrest. A 76th Precinct sergeant and 76th Precinct Sector A responded to the location at 1:15 a.m.

Command Log

A request to the IAB-CCRB liaison for the tour 1 PSA 1 Command Log rendered only a single page documenting § 87(2)(b) s entry into the command log (Enc. 32a). PO Shepherd entered § 87(2)(b) into the Command Log at 1:40 a.m. and noted that his condition was “apparently normal.” The only other arrest documented in the Command Log was affected by PO Elizabeth Charneco of PSA 1.

PSA 1 Roll Call

The June 3, 2012, tour 1 roll call, consisting of officers assigned to work from 11:30 p.m. on June 2, 2012, to 8:00 a.m. on June 3, 2012, lists only 11 active officers (Enc. 33a – 33f). An additional copy of the roll call was received at the CCRB confirming that only 11 officers were assigned to the midnight tour. The roll call does not list a prisoner holding pen cell attendant for the stationhouse. The roll call mainly lists supervisors, the telephone switchboard operator, a sector car and a single Conditions unit. The only plainclothes officers working the PSA 1 midnight tour would likely be the Conditions team, PO Saidul Islam and PO Nekia Morgan.

The PSA 1 Prisoner Holding Pen Roster, Property Vouchers, and Prisoner Movement Slip were unavailable to the CCRB via official requests to the IAB-CCRB liaison (Enc. 41a – 41n).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming he was improperly detained, assaulted, battered, refused medical treatment which resulted in permanent numbness to his right thumb and medical expenses. He is seeking an undisclosed amount of money as redress (Enc. 38a – 38c).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] (Enc. 2d).

Subject Officers CCRB History

- PO Nigro, PO Zeikel and Sgt. Figueroa have been members of the service for 5, 5, and 7 years, respectively, and there are no substantiated CCRB allegations against them (Enc. 2a – 2c).

Conclusion

Identification of Subject Officers

PO Nigro, Sgt. Figueroa and PO Shepherd acknowledged their involvement with [§ 87(2)(b)] on the date of the incident.

[§ 87(2)(b)] described the officer who punched him as a 6’2” tall, uniformed white male with spiky hair and an average build. [§ 87(2)(b)] contended that this officer placed him into an RMP and punched him in the face. PO Zeikel was identified by PO Shepherd as the officer who transported [§ 87(2)(b)] to the stationhouse. PO Zeikel is a 6’4” tall, 205-pound white male with medium-length slicked back spiky hair who was working in uniform on the date of the incident. PO Zeikel confirmed that he transported [§ 87(2)(b)] to the stationhouse. PO Zeikel was working with PO Kashinsky [§ 87(2)(g)]

[§ 87(2)(b)] alleged that various officers who he could not describe randomly visited him in the PSA 1 holding cells and threatened him. He was able to provide a baseline description for only one of the officers, consisting of a 5’5” tall, muscular white male in his 20s to 30s who was dressed in plainclothes. According to the PSA 1 roll call and PO Shepherd, a prisoner holding pen attendant was not working the day of the incident. Of the officers on the roll call, only PO Morgan, a black male, and PO Islam, an Asian male, would have been working in plainclothes at the time of the incident (Enc. 33a – 33f). According to the incomplete Command Log, PO Elizabeth Charneco, a Hispanic female, was the only officer who affected an arrest in the immediate time frame that would have been present in the holding cells; however, she was also eliminated as a potential subject officer based on her gender and ethnicity (Enc. 32a). The Booking and Arraignment Disposition System (BADs) arrest index concluded that PO Shepherd was the only PSA 1 officer to make an arrest around the time of the incident (Enc. 36a – 36c). The Prisoner Holding Pen Roster, Property Vouchers,

behind your back.” PO Nigro denied using profanity during the course of the incident and Sgt. Figueroa and PO Shepherd denied witnessing PO Nigro use profanity toward § 87(2)(b)

§ 87(2)(g)

Allegation D – Force: PO Jason Zeikel used physical force against § 87(2)(b) at Richard Street and Visitation Place, in Brooklyn.

§ 87(2)(b) alleged that PO Zeikel punched him in the face after § 87(2)(b) had been fully handcuffed and was being placed into an RMP. PO Zeikel contended that § 87(2)(b) was compliant throughout their interaction and denied using any form of physical force against § 87(2)(b) including punching. Sgt. Figueroa, PO Shepherd, and PO Nigro, who were in the direct vicinity of § 87(2)(b) being placed into the RMP, denied witnessing PO Zeikel punch § 87(2)(b). As noted previously, an officer ambiguously documented § 87(2)(b)'s “facial bruising” while processing his arrest at Brooklyn Court Section, but § 87(2)(b)'s arrest photo did not depict facial injuries and he did not receive medical treatment.

§ 87(2)(g)

Allegation E – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force at the PSA 1 stationhouse.

§ 87(2)(b) alleged that officers, some of whom he could not describe, threatened to “fuck him up” and threatened him with harassment while in the PSA 1 prisoner holding cells. All officers interviewed denied witnessing or having information pertinent to the identity of the officers who allegedly threatened § 87(2)(b). The available NYPD documents were futile in identifying the officer who was in the holding cell at the time of the incident.

§ 87(2)(g)

Team: 2

Investigator: _____
Signature _____ Diana P. Murray _____
Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____

Title/Signature

Print

Date